COMESA Competition Commission
Kang'ombe House, 5th Floor
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 111 772 466/529/530
Email- compcom@comesacompetition.org

Common Market for Eastern and Southern Africa

Case File No. CCC/MER/09/40/2024

Decision[1] of the 114th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition by Delta-Sigma Holding Limited of Stratton Africa Holdings Limited and its controlled affiliates

ECONOMIC SECTOR: Agriculture

19 February 2025

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[1] In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Having regard to the COMESA Merger Assessment Guidelines of 2014;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State,

Desirous of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration,

Determines as follows:

Introduction and Relevant Background

1. On 11 October 2024, the COMESA Competition Commission (the "**Commission**") received a notification for approval of the merger regarding proposed acquisition by Delta-Sigma Holding Limited ("**Delta**" or the "**acquiring firm**") of 100% of the issued share capital of Stratton Africa Holdings Limited ("**Stratton**", together with its controlled affiliates, the "**target firm**"), pursuant to Article 24(1) of the Regulations.

2. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.

3. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.

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The Parties

Delta (the "acquiring firm")

4. The parties submitted that Delta is a Mauritian newly formed company established solely for purposes of the proposed transaction. It is indirectly controlled by Invictus Investment Co. PLC ("**Invictus**"), a listed entity in the Abu Dhabi Stock Exchange. Invictus is an agro-food commodities trading company with a focus on running efficient trading businesses through the development of a network of reliable suppliers and customers across the Middle East, Africa, Asia and the Americas. It currently owns 100% shareholding in Invictus Trading FZE ("**Invictus Trading**"). Invictus Trading is the main trading undertaking of Invictus, with a focus on wholesale trading of grains and other commodities, which include, wheat, sugar, maize, soybean meal, packaging materials, and cotton, sourcing them from major agricultural producing geographies and selling to its customers across Africa, the Middle East and Asia.

5. The parties submitted that within the Common Market, the acquiring group operates in Burundi, Comoros, Djibouti, Egypt, Ethiopia, Kenya, Malawi, Rwanda, Sudan, and Uganda.

Stratton (the "target")

6. The parties submitted that Stratton is an investment holding company incorporated in Mauritius with interests in the importation and supply of grain and its products, which include wheat, wheat flour, maize flour, pasta, and bran in the Common Market.

7. The parties submitted that within the Common Market, the target firm operates in Eswatini, Malawi, Mauritius, Zambia, and Zimbabwe.

Jurisdiction of the Commission

8. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission. Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") provides that:

> *"Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or* the *target firm, operate in two or more Member States, shall be notifiable if:*
>
> *a) the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds USD 50 million; and*

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b) the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds USD 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State".

9. The undertakings concerned have operations in two or more Member States. The undertakings concerned derived a turnover of more than the threshold of USD 50 million in the Common Market and they each derived a turnover of more than USD 10 million in the Common Market. In addition, the parties do not hold more than two-thirds of their respective aggregate turnover or asset value in one and the same Member State. The CID was thus satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

10. The proposed transaction entails that Delta will acquire 100% of the issued share capital in Stratton.

Competition Analysis

Consideration of the Relevant Markets

Relevant Product Market

11. Paragraph 7 of the Commission's Guidelines on Market Definition states that a *"**relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer/customer, by reason of the products' characteristics, their prices and their intended use**".*

12. The CID noted that the acquiring firm is involved origination, processing and wholesale trading of grains and other commodities, sourcing from major agricultural regions and distributing across Africa, the Middle East, and Asia. Its activities include wholesale supply of products including wheat, Sorghum, sugar, rice, and vegetable oil, along with the sale of finished goods like pasta, beverages, and automobiles. The CID also noted that the target firm is active in importing, processing and wholesale trading of grains such as wheat and maize and exports wheat flour, maize flour, pasta and bran from its production facilities in Mozambique.

13. The CID observed that the activities of the merging parties were overlapping and therefore its assessment of the relevant product market considered the origination, processing and wholesale trading of different types of grains, as well as supply of processed grains as discussed below.

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Origination and wholesale trading of grains

14. The CID noted that the grain trading supply chain involves several players operating at different stages of the value chain, starting with farmers who produce and supply raw grains to originators. Originators consolidate, prepare and process these grains for onward sale to wholesale traders or millers. Origination specifically refers to the market for purchasing crops such as harvested grains and oilseeds directly from farmers.[2] It focuses on sourcing grains directly from farmers, cooperatives, or local suppliers, serving as the foundational step of the value chain. It involves aggregating grains, maintaining quality through sorting and grading, and managing producer relationships. Further, it entails aggregating grains, maintaining grain products' quality through storage and handling in specialised facilities such as silos, elevators, and/or port terminals.[3] After this stage, the grains are transported either to processing or refining facilities (e.g., crushing soybeans into soybean oil, milling wheat into flour, refining sugar) or directly for trade and distribution in their unprocessed form.

15. The processed or unprocessed grain products are subsequently sold to various buyers in the downstream export markets. These buyers include food manufacturers, animal feed producers, and non-food manufacturing companies, such as biofuels producers or industrial products manufacturers.

16. At the downstream level, the marketing stage involves wholesalers selling different grains and agricultural products, such as wheat, maize, barely, oilseeds, and intermediate oilseed products. These wholesalers then supply these products to other third parties, food and feed retailers or other outlets for consumption. Additionally, direct sales can also occur between non-adjacent players in the value chain, such as direct sales by farmers/cooperatives to processors or by processors to end users.

17. Originators often have better access to advanced infrastructure, such as silos and collection centers, enabling efficient storage and logistics to ensure a reliable supply of quality grains for further processing or trade. In contrast, marketing/trading operations focus on the promotion and sale of grains or grain-derived products to downstream wholesalers, processors, and end-users. In ***Viterra/Gavilon***[4], the CID considered that the origination constituted a distinct market separate from the downstream wholesale markets as they involve different players and therefore different supply and purchase conditions. Farmers primarily sell to intermediaries who may further process the grains before marketing them.

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[2] See para. 7 of European Union Case No IV/M.1376 - Cargill/Continental Grain.
[3] See para 19 of Case No MER/02/18/2022, Decision of the Eighty-Fifth (85th) CID Regarding the Proposed Acquisition of Control by Viterra USA Investment, LLC of Gavilon Agriculture Investment, Inc
[4] Ibid. para. 21.

18. The intermediaries possess greater financial resources, larger storage and transportation capacity and more sophisticated trading practices, including paper trading than their customers at the downstream market.[5] Therefore, consistent with its decisional practices,[6] the CID considered that the origination of grains and the wholesale trading of grains were distinct markets.

19. The CID also considered whether segmentation of origination by grain type such as wheat, maize, and sorghum was necessary, given the possible market conditions that may apply for each grain type in terms of price, physical characteristics, and end-use. The CID considered the various types of grain and their use, such as: wheat, barley, corn, durra, hay for fodder, rye, oats, soybeans, sunflowers, grape seeds that are used for human and cattle consumption, to produce oil, flour and a variety of other uses.[7]

20. The CID further noted that from a supply perspective, grain traders can easily switch between supplying different types of grains since the handling of the grains does not require specialized skills or expertise. The CID observed that a trader specialising in wheat can easily transition to supplying maize in response to a small but significant price increase or favourable trading conditions for the latter, and vice-versa.[8] This can be due to the standardized nature of grain storage, handling, and trading. In terms of storage requirements, the CID observed that most facilities, such as silos and warehouses, are designed to store multiple grain types without requiring major modifications. Similarly, the CID[9] considered that segmenting the market by grain type was unnecessary since grain traders can easily switch between different types of grains without specialized skills, with major traders such as Archer Daniels Midland ("**ADM**") and Cargill demonstrating strong evident of supply-side substitutability. As major grain traders handle multiple grains without significant costs or risks, the CID considered that traders can readily adjust supply based on market conditions.

21. The CID, however, observed that at the wholesale trading level, differences between the various grains can be drawn on account of end use or pricing for each grain. For instance, traders at the origination stage procures and organises all types of grains since it is wholesale customers at the downstream markets that are

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[5] See para. 14 of Case No. CCC/MER/06/282022, Decision of Eighty-Sixth (86th) CID regarding the Proposed Merger Involving Olam Agri Holdings Pte. Limited and Salic International Investment Company.

[6] See Case File No. CCC/MER/02/18/2022, Decision of the Eighty-Fifth (85th) CID regarding the Proposed Merger Involving Viterra USA Investment, LLC and Gavilon Agriculture Investment, Inc; Case File No. CCC/MER/06/282022, Decision of the Eighty-Sixth (86th) CID Regarding the Proposed Merger involving Olam Agri Holdings Pte. Limited and Salic International Investment Company, decision dated 27 Sept 2022.

[7] See footnote 3 at https://www.concurrences.com/IMG/pdf/41774055.pdf?47446/78793127712468469f2c6c9ab58fcf9adcaae5bf87c0cb22b3196002eef8119c, accessed on 20 January 2025.

[8] See para 23 of Case File No. CCC/MER/02/18/2022, Decision of the Eighty-Fifth (85th) CID regarding the Proposed Merger Involving Viterra USA Investment, LLC and Gavilon Agriculture Investment, Inc

[9] See para. 23, Case File No. CCC/MER/7/23/2023, Decision of the 103rd CID Regarding the Proposed Acquisition of Viterra Limited by Bunge Limited.

active in the supply of different types of drains while traders at the downstream wholesale trading stage are influenced by the specific demands of individual end customers for their specific end use. Wheat is primarily used for flour production in bread, pasta, and other baked goods. To the contrary, maize serves as an input for starch production, food-grade products, and animal feed. Meanwhile, sorghum caters to gluten-free foods, traditional beverages, and animal feed markets. These differing demand characteristics indicate that each grain product type constitutes a distinct relevant product market. Therefore, in event of a 5 – 10 % increase in the price of wheat, it is unlikely that end customers would shift from demanding wheat to demanding maize given their distinct end uses.

22. With regard to the processed grain market, the CID observed that a further segmentation to sub-markets was possible including wheat flour, maize flour, pasta, and wheat bran, as each serves unique functions and possesses different compositions.

23. The CID observed that wheat flour comprised wheat-based milled flour used in baking, cooking, and food processing which was distinct from other types of flour such as maize flour, due to differences in composition, functionality, and consumer preferences. Similarly, the CID also observed that maize flour constituted a separate market given its use. For instance, in sub-Saharan Africa, maize flour serves as a staple food used in the preparation of traditional dishes like ugali or nsima. The preparation of such a traditional requires the usage of maize flour and other flour such as wheat flour is not likely to substitute maize in such dishes. Given the limited substitutability between maize and wheat flour, the two markets can be construed as distinct.

24. The CID further noted that a sub-product such as pasta was distinct since it is a processed wheat-based product requiring different production processes and driven by unique consumer demand factors. Although its raw material is wheat flour, pasta is differentiated by its end-use. Likewise, wheat bran, a by-product of wheat milling, serves a separate market primarily focused on animal feed and high-fiber food products, catering to livestock feed producers and specialized food industries. The CID considered that for purposes of the transaction, no further segmentation of the wheat products and maize flour markets was necessary in as much as no competition concerns would arise under any narrower segments of these markets.

25. In view of the foregoing, the CID considered that wheat products and maize flour constitute distinct products based on their demand characteristics and in view of the limited substitutability.

26. Therefore, for the purposes of conducting a competitive assessment in the current transaction, the CID identified the relevant product markets as:

(a) **the market for origination of grains,**

(b) **the wholesale trading of wheat,**

(c) **the wholesale trading of maize,**

(d) **the production and supply of wheat products, and**

(e) **the production and supply of maize flour.**

Relevant Geographic Market

27. The Commission's Guidelines on Market Definition define the relevant geographic market as comprising *"...**the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas**"*.[10]

28. The CID considered that the relevant geographic markets were likely to extend beyond the Common Market. While the importation of various grain types in most Member States is subject to government regulations such as licensing and compliance with sanitary and phytosanitary standards, these requirements are generally attainable and do not create prohibitive barriers to trade.

29. Additionally, the implementation of the COMESA Free Trade Area fosters a uniform regulatory environment where trade in wholly originating products, such as grains and oilseeds, is exempt from trade taxes. This harmonization creates a relatively homogeneous competitive landscape across the Common Market.

30. The CID considered that the geographic scope of the relevant markets extended across the COMESA region and were likely to be beyond. The CID observed that major players in these markets operated on a global scale, with the acquiring firm, for instance, sourcing wheat from agricultural regions across the globe such as the Black Sea, Europe, Australia, and North America and distributing to customers across Africa, the Middle East, and Asia.[11]

31. The CID also considered the parties' submission that the market for the trading of agricultural commodities is not limited to any particular region, and in particular not the African continent, as there is no impediment either from a supply or demand-side perspective which would prevent the trading of agricultural commodities worldwide. The CID considered that transportation costs were uniform for different regions and, whilst there may be temporary restrictions on trading from time to time

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[10] Paragraph 8 of the COMESA Market Definition Guidelines
[11] https://invictusinvestment.ae/wheat/, accessed on 15 January 2025

pursuant to World Trade Organization Rules on phytosanitary measures, these are not permanent.

32. The CID further considered that thirty-six (36) countries worldwide, including COMESA Member States such as Burundi, the DRC, Egypt, Libya, Madagascar, Rwanda, Somalia, Sudan, and Tunisia import over 50% of their wheat from Russia and Ukraine.[12] The CID also observed that France was the largest supplier of wheat and meslin to Africa as of 2022, according to trade value.[13] The continent imported French wheat worth over 3.6 billion U.S. dollars that year. Wheat exports to Africa from Russia amounted to nearly 2.5 billion U.S. dollars, while exports from Argentina recorded a value of nearly two billion U.S. dollars.

33. Given the global nature of grain origination and wholesale trading of different types of grains, including wheat and maize, the CID observed that it was feasible for companies to source such products from outside the Common Market.

34. In view of the foregoing and considering its previous decisional practice[14], the CID determined the relevant geographic market as global.

35. With regards to the geographic market for the production and supply of wheat products and maize flour, the CID noted that this may be influenced by trade flows and regulatory factors. Wheat products and maize products markets are likely to be at least Africa wide due to high import dependency, as seen in Egypt, which imports wheat products despite local production. The CID also noted that in 2021, Russia and Ukraine supplied a significant share of wheat and wheat flour to several North African and Middle Eastern countries.[15] In sub-Saharan Africa, maize flour trade occurs across the borders of African countries when local production falls short, with Malawi importing from Tanzania.[16] The CID noted that in 2021, the top global exporters of Maize products were Mexico, United States, Italy, Brazil, and Colombia.[17] Further, it Mazie suppliers SA is the leading supplier of maize and wheat products almost to most of African countries from South Africa.[18] The CID further noted from the parties' submission that the target firm in Mozambique exports wheat products as well as maize products from Mozambique to Eswatini, Zimbabwe, South Africa, and Zambia, pointing to a geographic market with a possible extension to at least Africa.

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[12] https://unctad.org/system/files/official-document/un-gcrg-ukraine-brief-no-1_en.pdf
, accessed on 20 January 2025.
[13] https://www.statista.com/statistics/1294153/value-of-wheat-imports-into-africa-by-exporting-country/, accessed on 3 February 2025
[14] para. 30, Case File No. CCC/MER/02/18/2022: Viterra/Gavilon.
[15] https://openknowledge.fao.org/server/api/core/bitstreams/ce3ed4d7-61b8-4c5a-b2cf-f59dd0310d13/content, accessed on 3 February 2025.
[16] https://openknowledge.fao.org/server/api/core/bitstreams/ce3ed4d7-61b8-4c5a-b2cf-f59dd0310d13/content, accessed on 3 February 2025.
[17] https://wits.worldbank.org/trade/comtrade/en/country/ALL/year/2021/tradeflow/Exports/partner/WLD/product/110220, accessed on 3 February 2025.
[18] https://www.maizesuppliers.com/maize-flour-suppliers/, accessed on 6 February 2025.

Conclusion on Relevant Markets

36. Based on the foregoing assessment, and without prejudice to its approach in similar future cases, the CID identified the relevant markets as follows:

    (a) the global market for origination of grains,

    (b) the global wholesale trading of wheat,

    (c) the global wholesale trading of maize,

    (d) the production and supply of wheat products in Africa, and

    (e) the production and supply of maize flour in Africa.

Market Shares and Concentration

37. The CID recalled that the determination of market shares and concentration provides a first indication of whether a change in market structure could create or facilitate the exercise of market power. Market power is defined as the ability of a firm profitably to increase and sustain the price of a product above competitive levels or restrict output or reduce product quality independently of its competitors, customers and consumers. The CID recalled that in competition case assessment it is unlikely to find concern in horizontal mergers, be it of a coordinated or of a non-coordinated nature, where a merged entity's market share is below 15% and the sum of the market shares of the top three firms is less than 70%.[19]

38. The CID noted that submission by the parties that numerous competitors are active in the trading of wheat and maize, many of whom operate at a global scale. The CID observed that prominent global commodities traders such as ADM, Bunge Group (including Viterra), Cargill, Louis Dreyfus Company (LDC), Marubeni, CFCO International ("CFCO") and Olam Agri. While the parties estimated the market shares of each of Cargill and LDC at approximately between >5% and <10%[20], they indicated that they do not have estimated market shares for the other global players.

39. The CID observed that the leading players in the global origination and trading of agricultural commodity market, based on their profit margins included the following.[21]

[19] The COMESA Merger Assessment Guidelines paragraph 8.10.
[20] Information claimed as confidential by the merging parties.
[21] https://www.ucl.ac.uk/cles/sites/cles/files/cles_policy_paper_3_2024.pdf, accessed on 25 January 2025.

Increase Net Profit Margins

Net Margin (%)	2016	2017	2018	2019	2020	2021	2022
ADM	2.1%	2.0%	2.8%	2.2%	2.8%	3.2%	4.3%
Bunge	1.8%	0.5%	0.5%	-3.2%	2.8%	3.7%	2.5%
Cargill[121]	2.2%	2.6%	2.8%	2.3%	2.6%	3.7%	4.1%
COFCO	0.8%	1.5%	1.9%	1.7%	2.9%	2.4%	2.2%
LDC	0.8%	0.8%	1.0%	0.7%	1.1%	1.4%	1.7%
Average	1.50%	1.44%	1.78%	1.74%[122]	2.44%	2.88%	2.96%

40. The CID observed that the acquiring firm does not feature among these global leaders, and the target firm's operations were confined exclusively to the African continent. The CID considered that the merging parties held a relatively modest position in the global agricultural commodity trading landscape.

41. The CID noted the parties submitted that the combined global wheat trading volumes of the acquiring and target firms represented a minimal share of the overall global wheat market. From a COMESA perspective, the CID also noted the parties' submission that there are numerous competitors active in wholesale trading of wheat, most of whom are international players with a global presence. The CID observed that these players included significant global commodities traders such as Bunge (including Viterra), Olam Agri, and Louis Dreyfus Company (LDC). The CID noted the parties combined estimated market shares in the wholesale wheat trading of the Common Market to be < 7%.[22]

42. The CID considered that given the negligible global market share of the target firm and its limited geographic scope, combined with the acquiring firm's modest market presence globally and in the Common Market, neither firm exercised significant market power in the wholesale trading of wheat. The CID also considered that the presence of prominent global players would maintain the competition both at the global and regional markets, mitigating any potential competitive concerns. The CID observed that the major players in the market for the global grain trading who are also the leading players in the global wholesale wheat trading market were as presented below.

[22] Information claimed as confidential by the merging parties.

Table 2: Estimated market shares of the top global players in the wholesale trading of wheat market[23]

Competitors	Estimated Market share (%)
Cargill	*[20 – 25]%*
Bunge Group	*[10 – 15]%*
COFCO[24]	*[10 – 15]%*
ADM	*[10 – 15]%*
LDC	*[5 – 10]%*
Others	27%
Total	**100**

43. The CID observed that the merging parties were not amongst the top five global leaders, and therefore, the proposed transaction is unlikely to significantly alter the global competitive landscape.

44. With respect to the global wholesale trading of maize, the CID noted the parties' submission that the major global players with their respective global market share estimates as presented below.

Table 3: Estimated market shares of the merging parties' and their top global competitors in the wholesale trading of maize[25]

Competitors	Estimated Market share (%)
LDC	*[10 – 15]%*
ADM	*[5 – 10]%*
Cargill	*[5 – 10]%*
Bunge	NA
Olam Agri	NA
Acquiring group	***<5%***

45. The CID observed that the acquiring group has a minimal presence in the wholesale trading of maize with a market share of less than 5%. The CID considered that the transaction was unlikely to negatively affect the competitive dynamics in this market. The acquiring group's position would remain negligible compared to its competitors.

46. The CID noted the parties' submission that the target firm's market share in the production and supply of wheat flour and maize flour is insignificant compared to major players within the African continent. The CID also noted that markets for wheat flour and maize flour within the Common Market were characterized by strong import competition.

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[23] https://ukragroconsult.com/en/news/four-companies-control-half-of-the-worlds-agricultural-trade-but-competition-is-intensifying/?utm_source=chatgpt.com, accessed on 6 February 2025.
[24] https://www.grandviewresearch.com/industry-analysis/wheat-market-report, accessed on 6 February 2025.
[25] Information claimed as confidential by the merging parties.

47. In view of the foregoing, the CID considered that the proposed transaction will not result in a significant change to the existing market structure, give the insignificant market share of the merged entity. Further, the merged entity will continue to face competition from established global and regional players.

48. The CID also considered that customer foreclosure strategy would not be a concern in light of the parties' insignificant market share in the global grain trading market.

Consideration of Third-Party Views

49. In arriving at its determination, the CID also considered submissions from the national competition authorities of Eswatini, Egypt, Kenya, Malawi, Mauritius, Zambia and Zimbabwe which confirmed the absence of competition and public interest concerns.

Determination

50. The CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor will it be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.

51. The CID, therefore, approved the transaction.

52. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 19th day of February 2025

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Vipin Naugah